

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTONIO FLETCHER,	§	
	§	No. 235, 2005
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware, in and
v.	§	for Kent County in IK04-02-
	§	0374-0376; IK04-04-0285.
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	Def. ID No. 0401019582

Submitted: October 27, 2005

Decided: January 30, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 30th day of January 2006, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw and the State's response thereto, it appears to the Court that:

(1) The appellant, Antonio Fletcher, was one of several men charged with robbing a Domino's Pizza delivery person on January 12, 2004 in Harrington, Delaware. After a Superior Court jury trial in February 2005, Fletcher was convicted of Robbery in the First Degree, Possession of a Firearm During the Commission of a Felony, Conspiracy in the Second Degree and Offensive Touching. The Superior Court sentenced Fletcher to a total of fifteen

years at Level V imprisonment suspended after six years for two years at Level III and one year at Level II probation.

(2) Fletcher's trial counsel has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c). The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold. First, the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal.¹ Second, the Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.²

(3) Fletcher's counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues. By letter, counsel informed Fletcher of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw and the accompanying brief. Fletcher was also informed of his right to supplement his attorney's presentation. Fletcher filed a response to his counsel's motion to withdraw and a brief raising

¹*Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

²*Id.*

issues for this Court's consideration. The State has responded to the position taken by Fletcher and has moved to affirm the Superior Court's judgment.

(4) At Fletcher's trial, Kyle Demby testified that on the evening of January 12, 2004, he was dispatched to deliver a Domino's Pizza order to a residence in Harrington, Delaware. Once he arrived at the residence, Demby spoke to two men, the first of whom was standing in the driveway. Demby informed the first man of the price of the pizza. As the first man walked to a car that was parked nearby, the second man, who was standing near the same parked car, approached Demby, pulled a gun, and demanded that Demby turn over his money. When Demby tried to jump back into his car and leave, the first man and the second man grabbed Demby and dragged him from his car. During the ensuing scuffle, the first man struck Demby on the chin.

(5) Demby testified that he got away from his attackers and ran and hid in some bushes behind the residence. When Demby emerged from the bushes a short time later, the two men were gone. Demby then got into his own car and returned to Domino's Pizza where he called the police.

(6) Delaware State Police Detective Daniel Sponaugle testified that he took a report from Demby the evening of January 12, 2004. Several days later, Detective Sponaugle showed Demby a total of three photo lineups, each

containing six photographs. From the first array of photos, Demby identified Fletcher as someone who resembled the gunman. From the second and third photo arrays, Demby tentatively identified Sterling Anderson as the man who struck him on the chin.

(7) Detective Sponaugle interviewed Fletcher and took a statement from him on January 23, 2004. At trial, Detective Sponaugle testified that, during that interview, Fletcher initially denied being at the scene of, or knowing anything about, the robbery of Demby on January 12, 2004. Eventually, Fletcher admitted to Detective Sponaugle that he was at the scene of the robbery. Fletcher continued to deny, however, that he participated in the robbery and claimed that he remained inside of the parked car. Fletcher also told Detective Sponaugle that another man, Rodney Gladden, was the gunman. Detective Sponaugle testified that he later found the gun at Gladden's residence.

(8) The State's last witness, Sterling Anderson, testified that he did not participate in the robbery, but that he and Fletcher were outside of the parked car at the scene of the robbery. According to Anderson, Fletcher had something in his hand that appeared to be a gun.

(9) At the close of the State's case, Fletcher moved for a judgment of acquittal. The Superior Court denied Fletcher's motion.

(10) In his written submission on appeal, Fletcher claims that Anderson testified falsely, and that the other evidence against him at trial was inconsistent and otherwise insufficient to support his convictions. Fletcher also raises a claim of ineffective assistance of counsel; however, we decline to address that claim in this direct appeal.³

(11) In reviewing a trial judge's denial of a motion for judgment of acquittal, this Court considers the evidence in the light most favorable to the State and determines whether any rational trier of fact could have found the defendant guilty beyond a reasonable doubt.⁴ In making its determination, the Court does not distinguish between direct and circumstantial evidence.⁵ Moreover, there is no requirement that testimonial evidence be corroborated by physical evidence.⁶

³*See Wing v. State*, 690 A.2d 921, 923 (Del. 1996) (refusing on direct appeal to consider a claim of ineffective assistance of counsel that was not raised in the trial court).

⁴*Hardin v. State*, 844 A.2d 982, 989 (Del. 2004).

⁵*Davis v. State*, 706 A.2d 523, 525 (Del. 1988).

⁶*Hardin v. State*, 840 A.2d 1217, 1224 (Del. 2003) (citing *Styler v. State*, 417 A.2d 948, 950 (Del. 1980)).

(12) Adjudged by that standard, the record reflects that the State presented sufficient evidence to support the jury's finding that Fletcher was guilty beyond a reasonable doubt of the crimes for which he was convicted, *i.e.*, Robbery in the First Degree,⁷ Possession of a Firearm During the Commission of a Felony,⁸ Conspiracy in the Second Degree⁹ and Offensive Touching¹⁰. Fletcher's claim of false testimony is based upon alleged inconsistencies and vagaries in Anderson's testimony. The jury, however, was the sole judge of each witness' credibility and was solely responsible for resolving any conflicts

⁷See Del. Code Ann. tit. 11, § 832 (providing that a person is guilty of the felony of first degree robbery when a person or another participant, in the course of committing theft, displays what appears to be deadly weapon).

⁸See Del. Code Ann. tit. 11, § 1447A (providing that a person is guilty of possession of a firearm during the commission of a felony when a person knowingly possesses a firearm during the commission of a felony).

⁹See Del. Code Ann. tit. 11, § 512 (providing that a person is guilty of conspiracy in the second degree when the person intends to promote the commission of a felony and agrees with another person to engage in conduct constituting the felony and one person commits an overt act in furtherance the conspiracy).

¹⁰See Del. Code Ann. tit., 11, § 601 (providing that a person is guilty of offensive touching when the person intentionally touches another person with a member of his or her body or with any instrument, knowing that the touching is likely to cause offense or alarm to that person).

in all of the testimony it heard.¹¹ There is no indication in this record that the jury did not properly carry out its responsibility.

(13) The Court has reviewed the record carefully and has concluded that Fletcher's appeal is wholly without merit and devoid of any arguably appealable issue. We are also satisfied that Fletcher's counsel has made a conscientious effort to examine the record and has properly determined that Fletcher could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹¹*Hardin v. State*, 840 A.2d 1217, 1224 (Del. 2003) (citing *Pryor v. State*, 453 A.2d 98, 100 (Del. 1982); *Tyre v. State*, 412 A.2d 326, 330 (Del. 1980)).